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C O N F I D E N T I A L SECTION 01 OF 02 LIMA 001124

SIPDIS

PASS USTR FOR EISSENSTAT, HARMON, BURR
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TAGS: [ETRD](#) [ECON](#) [EAGR](#) [SENV](#) [KIPR](#) [USTR](#) [PGOV](#) [EAID](#) [PE](#)

SUBJECT: DELUGE OF DECREES FOR FTA IMPLEMENTATION AND
COMPETITIVENESS

REF: 07 LIMA 3887

Classified By: Ambassador P. Michael McKinley, reasons 1.4(b)&(d)

SUMMARY

¶1. (C) The Garcia Administration issued nearly 100 legislative decrees over the past few months to implement the provisions of the US-Peru Trade Promotion Agreement (PTPA) and to improve Peru's competitiveness in the global economy. Sixty-four of these were published last week, including laws aimed at implementing the environment, intellectual property (IP) and agriculture chapters of the PTPA. The GOP hopes to complete the remaining (mostly non-legislative) implementation tasks in time for an announcement by APEC leaders' week in November of a January 1, 2009 entry into force date. As some feel that the GOP overstepped the scope of its delegated legislative authority, it will be interesting to see if the Peruvian Congress attempts to reverse some of the decrees when it returns to session on July 27. End Summary.

HUGE PUSH TO MAKE LEGISLATIVE DEADLINE

¶2. (SBU) The Garcia Administration took full advantage of the legislative authority delegated by the Peruvian Congress for the purposes of implementing the US-Peru Trade Promotion Agreement (PTPA) and improving Peru's competitiveness so it can better benefit from global trade (reftel). All government ministries have worked hard since March 2008 to prepare and enact reforms, issuing nearly a hundred legislative decrees (with the force of law) plus hundreds of ministerial resolutions. The 180 calendar days during which the Executive could enact legislative decrees closed with a deluge, with the GOP publishing 64 such decrees last week, including 37 on the Saturday, June 28 deadline. This last push included laws aimed at implementing the environment, intellectual property (IP) and agriculture chapters of the PTPA, as well as a wide range of "internal" measures that included a law to increase the competitiveness and formal status of micro and small enterprises (DL 1086) and changes to the National Public Investment System (SNIP).

ENVIRONMENT: PTPA, MINISTRY & MORE

¶3. (C) On environmental issues, the GOP published three

legislative decrees on June 27-28 essential to implementation of the PTPA's environment chapter and unique forestry annex: modifications to the Law of the Environment (DL 1055), a new Forest & Wildlife Law (DL 1090), and a law creating an independent forest and wildlife supervisory entity (OSINFOR, DL 1085). According to informed GOP sources, a fourth PTPA-related decree, which revises the Penal Code to enact stiffer penalties for illegal logging and IPR violations, missed the publishing deadline by mistake. President Garcia submitted it to the Congress' Permanent Committee on June 30 requesting its swift passage. Using the delegated authority, the Garcia Administration also established Peru's first-ever Ministry of the Environment (headed by renowned ecologist Antonio Brack) and filled some long-standing voids on maximum permissible limits of pollutants, environmental impact assessments, solid waste, fishing, water resources, and natural protected areas.

IPR: PROTECTIONS STRENGTHENED BY PTPA

14. (U) On intellectual property, the GOP published four key legislative decrees on June 28:

- protection of confidential test data for pharmaceuticals (DL 1072);
- complementary provisions to Andean Community Decision 486 that established the common IP regime (DL 1075);
- modifications to the Copyright Law (DL 1076); and
- border measures for protecting copyrights and trademarks (DL 1092).

AGRICULTURE: BIG CHANGES

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15. (SBU) The GOP also issued decrees on agricultural matters aimed at PTPA implementation, improving sectoral efficiency, and promoting development. The decrees included:

- regulating the compensation package for producers negatively affected by the PTPA;
- a new sanitary law (DL 1059);
- a completely restructured research service, focused on applied research (DL 1060);
- enhanced agricultural credit (DL 1020); and
- a new process by which native communities can sell, lease or partner with private investors to work their land (DL 1015 & 1073).

Opponents of the latter claim that native community rights are being damaged, as the percentage of community members required to be present for these land decisions is reduced. Proponents, including President Garcia, feel the law will directly benefit the poorest producers and finally opens an opportunity for investment in the highlands. Other decrees include a restructuring of the Agriculture Ministry, private investment in irrigation, water management, food safety, and seed trade and production.

COMMENT

16. (C) The GOP has invested considerable time and energy in the PTPA. It is evident that the GOP took advantage of the opportunity to enact general reforms without the involvement of the Peruvian Congress, which has been heavily criticized for its lethargy in passing laws and its lack of cohesion. Of the decrees intended to implement PTPA commitments, the IP and environment ones proved toughest to finalize. Bolivia, one of the four Andean Community members, made it difficult for Peru to get Andean Community permission to modify its IP regime. The pharmaceutical provisions also proved challenging. On the environment, several GOP agencies had to work creatively to come up with a new model for the independent forestry supervisor and modifying the penal code to increase penalties for illegal logging was a Herculean task with strident opposition from some sectoral interests

and regional and local officials.

17. (C) Although some measures are controversial, in general, the more than a hundred legislative decrees issued by the Garcia Administration go a long way to improving Peru's competitiveness through improvements in labor, customs, education, environment, IP, stock markets, agriculture, and other sectors. Many in the Peruvian Congress and in the media feel that the GOP overstepped the scope of its delegated authority. It will be interesting to see if the Congress, which seems to be increasingly shifting into opposition hands, attempts to reverse some of the legislative decrees when it returns to session on July 27. The decrees are also reviewable by the Constitutional Court. Nevertheless, the GOP remains hopeful of completing the many remaining (mostly non-legislative) PTPA implementation tasks in time for an announcement by APEC leaders' week in November of a January 1, 2009 entry into force date.

MCKINLEY